hand, my construction of the Ordinance is conscientiously followed it will be found not only that the revenue will be protected but also that overlapping and conflict between the different authorities will rarely occur.

Fine varied and forfeiture annulled in the first appeal.

Convictions quashed and forfeiture annulled in the second appeal.

X v. PUBLIC PROSECUTOR.

[Court of Appeal (Foster-Sutton, C.J., Taylor and Wilson, JJ.) January 10, 1951]

[F.M. — Criminal Appeal No. 74 of 1950]

Evidence Ordinance, 1950, ss. 11(b) and 14 — When facts not otherwise relevant become relevant — Intention.

While it is not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of a criminal act other than that covered by the charge, for the purpose of leading to the conclusion that he is a person likely from his criminal conduct to have committed the offence for which he is standing his trial, the mere fact that the evidence adduced tends to shew the commission of another offence does not render it inadmissible if it be relevant to an issue before the Court, and it may be so relevant if it is indicative of a state of mind, such as intention.

CRIMINAL APPEAL.

P. P. Nair for the appellant.

A. M. Webb for the respondent.

The facts appear sufficiently from the judgment of the Court which was delivered by :—

Foster-Sutton, C.J. : — The appellant in this case was charged and convicted under Regulation 4C(1) of the Emergency Regulations, 1948.

The case for the prosecution was that the appellant, who was a tapper on an estate in Johore, on or about the 14th October, 1950, went to the bungalow of a member of the staff of the estate, and told him that the bandits came and wanted some money from him, that the appellant first asked for 10% of his salary and, when told by him that he had no money, the appellant then asked him to give at least $10, and that when he refused to do so the appellant insisted that he should give $10 on pay-day.

Evidence was led by the prosecution to shew that the appellant consorted with bandits who visited the same estate on the 27th October, 1950, and that during their visit he aided and abetted them. This evidence was admitted after a submission by the Deputy Public Prosecutor that it was admissible under section 11(b) of the Evidence Ordinance, 1950, as going to shew that the money demanded was, in fact, intended for the use of the bandits.

On hearing of this appeal Mr. Nair, on behalf of the appellant, submitted that the evidence as to the latter incident was inadmissible as it tended to shew that the accused had been guilty of a criminal act other than the one covered by the charge, that the two acts did not form part of the same transaction and that an interval of fourteen days is too remote, alternatively, "that if the evidence was admissible on any technical ground it should not have been admitted because it was too prejudicial to the accused".

While it is not competent for the prosecution to adduce evidence tending to shew that the accused has been guilty of a criminal act other than that covered by the charge, for the purpose of leading to the conclusion that he is a person likely from his criminal conduct to have committed the offence for which he is standing his trial, the mere fact that the evidence adduced tends to shew the commission of another offence does not render it inadmissible if it be revelant to an issue before the Court, and it may be so relevant if it is indicative of a state of mind, such as intention.

Under section 11 of the Evidence Ordinance facts not otherwise relevant are declared to be relevant "if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable", and section 14 of the Ordinance provides that facts shewing the existence of any state of mind, such as intention, are relevant when the existence of any such state of mind is in issue or relevant.

In order to make out their case, the prosecution had to satisfy the Court, *inter alia,* that the money demanded by the appellant was intended for the use of persons who intended or were about to act or had recently acted in a manner prejudicial to public safety or the maintenance of public order.

In our opinion, the evidence which was led as to the conduct of the appellant during the incident which took place on the 27th October, 1950, makes it highly probable that his statement regarding his object in making the demand correctly represented his intention at that time.

We are also of the opinion that his conduct on the occasion of the second incident was relevant as

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Note: — The trial of this case was heard in camera. All names have, therefore, been omitted from the published judgment. — Ed. M.L.J.

indicating that his intention as expressed at the time the demand was made was in fact his intention, regarding the use to which the money was to be put.

In our view, therefore, the evidence complained of by Mr. Nair was admissible under section 11 and also under section 14 of the Evidence Ordinance, and the appeal is accordingly dismissed.

Appeal dismissed.

DAIMON BIN BANDA v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Taylor, J.) January 25, 1951]

[K.L. — Criminal Appeal No. 80 of 1950]

Prevention of Corruption Ordinance, 1950, s. 13(3) — Whether the provision of s. 13(3) does or does not abrogate the settled law with regard to accomplices — Police investigation report — Admissibility of — Criminal Procedure Code, s. 113.

Where in a case witnesses are accomplices and not independently corroborated it is settled law that it is not safe to convict on such evidence unless, having been carefully directed on the law, the trial Court decides that in the special circumstances of the case such evidence can be believed. The provision of section 13(3) of the Prevention of Corruption Ordinance, 1950, does not abrogate the rule; it introduces only a limited modification. This sub-section is in the nature of an exception to a standing rule of evidence and, as an exception, it must be construed strictly.

CRIMINAL APPEAL.

A. J. Bostock-Hill for the appellant.

A. M. I. Austin (D.P.P.) for the respondent.

Taylor, J. : — The appellant, who is a detective, was convicted of corruptly receiving $100/-. The witnesses were accomplices and not independently corroborated. It is settled law that it is not safe to convict on such evidence unless, having been carefully directed on the law, the trial Court decides that in the special circumstances of the case such evidence can be believed. In this case the judgment of the learned Magistrate contains no indication that he had these principles in his mind.

The Deputy Public Prosecutor suggested that in corruption cases the rule does not apply by reason of section 13(3) of the Prevention of Corruption Ordinance, 1950. That provision, however, does not abrogate the rule. It introduces only a limited modification. It does not apply to accomplices generally. The word "accomplice" does not appear in the sub-section. The effect of the new provision is that in corruption cases the mere fact that a man has made an improper payment is not by itself enough to brand the man as a person whose evidence, if uncorroborated, is probably untrustworthy. If the man has taken part in the transaction in such a way as to show that, apart from the bare payment, he was an accomplice, then the ordinary rule applies.

The sub-section is in the nature of an exception to a standing rule of evidence and, as an exception, it must be construed strictly. It must not be extended. If it appears that a man has made a payment and therefore may be within this exception, it is necessary to scrutinise his evidence very carefully. The Court may decline to convict on the uncorroborated evidence of such a witness. It is highly desirable that whenever a Magistrate applies this sub-section he should specifically refer to it in his judgment and analyse the evidence of the witnesses concerned.

The Deputy Public Prosecutor also pointed out that a police investigation report had been put in at the trial and that this might, under the Evidence Ordinance, be regarded as corroboration of the evidence of the witness who made it; he admitted that it was of slight weight only, not having been made until two months after the event. Actually, this document was not admissible and ought not to have been proved. First information reports to the police are admissible. Statements made during investigation are not admissible. In this case the police received some information but, apparently, did not then record a formal report but commenced the investigation and recorded the so-called report later. There are cases where it is necessary to commence investigation without waiting for a formal report to be recorded; in such a case it may be convenient for a later statement to be recorded for police purposes in the form of a report; but, however that may be, such a report is, for the purposes of section 113 of the Criminal Procedure Code, an investigation statement and therefore inadmissible (except in special circumstances).

It is clear that the appellant was convicted on the uncorroborated evidence of witnesses who were accomplices in the full sense, so that section 13(3) does not apply, and as the Magistrate omitted to caution himself, the conviction cannot stand; the appeal therefore was allowed.

Appeal allowed.